

**R.C.S.No.303/2017
Roma vs State & Ors.**

ORDER BELOW EXH.5.

01] The plaintiff has claimed the Temporary Injunction restraining defendant Nos. 6 to 9 from interfering in peaceful possession of plaintiff over the suit property and also creating third party interest therein and also restraining defendant Nos. 3 to 5 from further making any changes in the record of rights till disposal of the main suit.

02] In short, it is the case of plaintiff that the suit property (tenancy land) as described in plaint para No. 1 was originally held by one Dehu Kanu Patil, who happened to be common ancestor of defendant Nos. 11 to 24. During his lifetime, he transferred the suit property in favour of plaintiff by registered Sale Deed dated 10/07/1967. The plaintiff was also then put in physical possession thereof. Initially, the Mutation Entry No. 342 was also recorded on that basis. However, the same could not be finalized endorsing that the sale transaction is contrary to the Bombay Prevention of the Fragmentation and Consolidation of Land Holdings Act, 1947 (for brevity “the Consolidation Act”) as the property in sale transaction was treated as fragment. The specific endorsement of action taken

under the said Act is also found place as against the said Entry. However, it is just an endorsement without holding any Inquiry and giving the opportunity to the plaintiff in that regard. Thus, the said endorsement is apparently void ab-initio. On the contrary, the plaintiff has purchased the entire area of the land S.No. 49/4 area 0-07 R and S.No. 49/5 area 0-14 R (the subject matter in RCS No. 302/2017) by two different sale deeds. Therefore, the question of making fragment does not arise. As such, the right of plaintiff over the suit property never extinguished in the eye of law. Moreover, she has been enjoying the physical till today. In order to take care of the suit property, she has already appointed one Supervisor – Deepak who is doing his job promptly.

03] On 25/09/2017 defendant Nos. 6 to 9 illegally entered in the field of plaintiff and started planning about construction of a factory over there which was noticed by the Supervisor. The Supervisor immediately informed the activities to the plaintiff. The plaintiff then immediately took search of the Government Record and she surprisingly came to know about the existence of one Sale Deed dated 05/09/2017 in respect of the suit property. When the plaintiff inquired into the matter by appointing the Lawyer, she further came to know that the original recorded Mutation Entry No. 342 based upon the registered Sale Deed dated 10/07/1967 was not confirmed by

the revenue authority on the ground that the transaction contravenes the provisions of Consolidation Act. Although the right of the deceased Dehu was already extinguished with the execution of the sale deed dated 10/07/1967, the name of Dehu continued in the record of rights owing to not confirmation of the Mutation Entry No. 342. The existence of such name was nominal one without attaching any kind of rights.

04] In the meanwhile, the original holder – Dehu died leaving behind him defendant Nos. 11 to 24 as his legal heirs and successors. As the name of deceased Dehu was continuing in the record of rights, the names of legal heirs of deceased Dehu entered in the record by way of Mutation Entry No. 511, 583 and 592 respectively. Taking benefits of this event, the defendants without having any right and authority further succeeded to get sanctioned another Mutation Entry No. 630 in the year 1977 thereby canceling earlier Mutation Entry 342 partly lying in favor of plaintiff.

05] Defendant Nos. 11 to 24 taking benefit of their names entered in the record, they further transferred the suit property in favour of defendant No. 10 by registered Sale Deed dated 16/02/1997 but without delivering the possession. The Mutation Entry No. 633 was also passed in that regard. Defendant No. 10 though purchased the said property from

defendant Nos. 11 to 24, he never took search of the revenue record. Had he taken so, he would have definitely come across with the surviving transaction effected with the plaintiff through the Mutation Entry No. 342. As such, defendant No. 10 cannot be called as bonafide purchaser. Despite, he made further similar kind of transaction (without delivering the possession) with defendant Nos. 6 to 9 by registered Sale Deed dated 05/09/2017. As defendant No. 10 himself had no title in the suit property, the subsequent purchasers will not get any valid title of the suit property. On the basis of such transaction, defendant Nos. 6 to 9 are now trying to forcibly dispossess the plaintiff from the suit property and actually tried on 25/09/2017. Thus, the plaintiff has expressed the great apprehension lying in mind about her forcibly dispossession and creation of further third party interest. The plaintiff lastly prayed for grant of the application only against defendant Nos. 6 to 9 and 3 to 5.

06] Defendant Nos. 6 to 9 have resisted the claim by filing Written Statement and Written Reply at Exh. 58. They have specifically denied the alleged valid title and possession of plaintiff over the suit property on the basis of Sale Deed dated 10/07/1967. Although the defendants have denied the claim of plaintiff, they have not disputed the fact of initial ownership lying with the deceased Dehu Kanu Patil. However, they have specifically denied that the further fact of execution of a valid

Sale Deed dated 10/07/1967 in favour of plaintiff.

07] As per the case of defendants, the said transaction was defective and void ab-initio as per the provisions of the Consolidation Act. Accordingly, the endorsement in that regard as found in Mutation Entry No. 342 cannot be faulted with. Even otherwise, the plaintiff has not challenged the said entry since its inception and slept over her right for considerable period of 69 years. The possession over the suit property was continuously lying with the deceased Dehu and after his death with his legal heirs and successors. Not only this, the Mutation Entry No. 630 was also effected thereby canceling the recorded Mutation Entry No. 342 lying in favor plaintiff. On that basis, the legal heirs of deceased Laxman (Defendant Nos. 11 to 24) further transferred the suit property in favour of defendant No. 10 by registered Sale Deed dated 16/10/1997. The plaintiff even did not challenge the said transaction.

08] The continuous entries lying in the name of legal heirs of deceased Dehu Kanu Patil and thereafter defendant No. 10 in the column of possession itself sufficient to show that the physical possession was always lying with them and not with plaintiff though alleged. As such, the claim of plaintiff in respect of title as well as possession and that too after a long period cannot be entertained. They lastly prayed for rejection of the

application.

09] Heard both the sides, the Notes of Arguments (Exh. 47 & 48) filed by plaintiff & defendant No. 10 respectively. I have also gone through the documents on record. The points arise for my determination along with my findings thereon are as under :

<u>Sr. No.</u>	<u>ISSUES</u>	<u>Findings</u>
1	Whether the plaintiff has prima facie case ?	No.
2	Whether the balance of convenience tilts in her favour ?	No.
3	Whether the irreparable loss will be caused to her if the Temporary Injunction is refused ?	No.
4	What order ?	The application is rejected.

REASONS

AS TO POINT NO. 1 :

10] The plaintiff has come with the specific case that she has become the owner and in possession of the suit property on the basis of the registered Sale Deed dated 10/07/1967 executed by the original holder – Dehu Kanu Patil. The Mutation Entry

No. 342 was also recorded in the record of rights. As soon as the vendor Dehu transfers the suit property, all his rights and interest therein completely extinguishes then and there only unless the transaction of sale deed is canceled or declared as void by competent court of law. The sale deed is still surviving. It is neither canceled nor declared as void by any competent court of law. If this is so, neither the original holder nor his legal heirs can claim any kind of right, title or interest in the suit property after execution of the sale deed. Despite the legal heirs of deceased Dehu i.e. defendant Nos. 11 to 24 claimed to be successive holders of the suit property and illegally transferred the same in favour of defendant No. 10 – the Firm by registered sale deed dated 16/10/1997. As such, the very transaction is void ab-initio. Consequently, the further transaction taken place between defendant No. 10 and defendant Nos. 6 to 9 by way of Sale Deed dated 05/09/2017 is also void ab-initio.

11] It is further submitted that as the Sale Deed was effected prior in point of time and thus it will supersede the subsequent sale transactions though they are effected by registered instruments. In support of the said contentions, the plaintiff has relied upon the case-laws namely; **Sawarni Vs. Inder Kaur, [AIR 1996 (SC) 2823]**, **B.R. Koteswar Rao Vs. G. Rameshwari Bal, [AIR 2004 (Andhra Pradesh), 34]**, **Ajmer Singh and Others Vs. Nishi Kumar and Another [AIR 2004**

(Punjab & Haryana) 85] and Babulal Vs. Hajarilal Kishorlal [AIR 1982 (SC) 818]. It has been held that the Mutation Entry does not confer or extinguish any substantial right of party involved in the property. It has been further held that any registered and valid Sale Deed or instrument will have to be recognized as proper and executable unless and until it is lawfully canceled or declared as void by the competent court of law even if the Mutation Entry lying in the revenue record does not recognize the existence of such Sale Deed or instrument.

12] Although the existence of registered Sale Deed or instrument is recognized in the eye of law as laid down in aforesaid case-laws in particular facts and circumstances involved therein, still the validity of the sale deed involved in the case in hand in different facts is another aspect to consider the rights of person relying upon such instrument. It is also true that the Mutation Entry does not create or extinguish any right of person involved in the property. Now, it will have to be seen whether the right of plaintiff springs from valid instrument recognized by law or what.

13] If the documents on record are perused, it would disclose that the plaintiff has purchased the suit property by registered Sale Deed dated 10/07/1967 from the original holder Dehu. As the subject matter of sale was considered as fragment

withing the meaning and provisions of the Consolidation Act, the said transaction cannot be recognized in the eye of law since its inception unless and until the endorsement of fragment is removed from the record. Although the plaintiff has claimed that he has purchased the entire area of the land S.No. 49/4 area 0-07 R and S.No. 49/5 area 0-14 R (the subject matter in RCS No. 302/2017) by two different sale deeds but on the same day i.e. on 10/07/1967, the property cannot be considered or treated as fragment as branded. However, the very contention cannot be accepted after a long period and that looking at her inaction on her part for considerable period either to get removed the endorsement or declared that the property free from fragmentation from the competent authority in the manner as alleged by her. As such, it cannot be faulted with the passing of the mutation entry and that too after a long period of 69 years.

14] Whether the dispute under suit will be of civil nature or what is also another aspect involved in the case in hand. However, the very aspect can be considered at later stage of proceeding. At this juncture, the act of plaintiff challenging the endorsement and further transaction after a considerable delay cannot be sustained. She has even not explained the circumstances for remaining silent for all these long years.

15] Although the plaintiff has alleged that she has not

been given an opportunity of being heard before entering the endorsement, the said allegation cannot be entertained after a long time as found place in case in hand. Even otherwise, it requires effective inquiry which is not possible at this stage. Till then, the prima facie endorsement as found in the revenue record will have to be presumed as correct. As such, the allegation of plaintiff pertaining to the endorsement cannot be entertained at this stage. In these circumstances, the contention of plaintiff as regards to her title on the basis of the Sale Deed cannot be accepted.

16] The second submission of plaintiff is that the further transaction by registered Sale Deed dated 16/10/1997 effected by defendant Nos. 11 to 24 in favour of defendant no. 10 is void ab-initio on the ground that the vendors themselves had no valid title over the suit property after effecting the transaction of Sale in favor of plaintiff. The very submission prima facie appears to be proper looking at the act of original holder Dehu transferring his entire interest unequivocally and without reserving keeping any kind of right in the suit property as against the receipt of consideration. However, the very aspect is pertaining to the provisions of Consolidation Act. Thus, it is the jurisdiction of the competent authority prescribed under the said Act to deal with the said aspect. Even otherwise, the said aspect requires thorough inquiry which is not possible at this stage. As such,

the aforesaid aspect will not prima facie support the case of plaintiff which she has to prove on her own feet during course of trial. Hence, the contention of plaintiff in that regard will have to be discarded.

17] The plaintiff has further come with the case that she is enjoying the suit property since the date of its purchase, her physical possession cannot be disturbed without following due process of law. In support of the said contention, she has relied upon the clause containing in the Sale Deed with regard to the delivery of possession. Although the plaintiff has claimed her continuous possession over the suit property on the basis of the clause of delivery of possession lying in disputed registered Sale Deed, the further requisite act of actually taking over the possession or entering the transaction in the revenue record does not find place in the case in hand. On the contrary, the fact of holding inquiry under the provisions of Consolidation Act can be transpired from the endorsement in Mutation Entry No. 342.

18] The name of plaintiff even does not find place in the cultivation column showing her physical possession or doing any agricultural operations from time to time. There is also nothing on record which would show that the plaintiff is in fact in physical possession of the suit property for the period as alleged. Even otherwise, the Sale Deed on which the plaintiff has

relied upon is already declared to be contrary to the provisions of Consolidation Act. As such, the plaintiff will be estopped or rather debarred from claiming any kind of rights or interest including the claim of possession based upon such Sale Deed.

19] Apart from the above, the legal heirs of original holder namely defendant Nos. 11 to 24 (technically though had no title or lawful possession over the suit property consequent to the execution of disputed Sale Deed) succeeded to retain the possession as can be ascertained from the Mutation Entry No. 630 passed on 31/12/1997 wherein the earlier endorsement recorded under the provisions of Consolidation Act was simply removed. As such, the revenue record supports the case of defendant Nos. 11 to 24 on the point of their physical possession.

20] True that there is nothing on record which would show that what kind of action taken against the original holder - Dehu during inquiry under the provisions of Consolidation Act whether his rights are recognized or terminated which he was holding prior to the execution of the Sale Deed lying in favour of plaintiff. The documents on record are prima facie showing the physical possession of defendant Nos. 11 to 24 and thereafter defendant No. 10 and subsequently of defendant Nos. 6 to 9. The point as to their physical possession, either legal or illegal as

discussed above, is another independent aspect, but the revenue record presently and prima facie recognizes the physical possession of defendant Nos. 11 to 24 till the transfer of the suit property from them in the year 1997 by registered Sale Deed dated 16/10/1997 in favour of defendant No. 10. Thereafter, the name of defendant No. 10 is found place in the cultivation column till the execution of further Sale Deed dated 05/09/2017 in favour of defendant Nos. 6 to 9. Although, the dispute as to valid title of defendants is another fact in issue between the State of Maharashtra and defendants, the case of defendants on the point of physical possession at this juncture seems to be proper and more probable than the case of plaintiff.

21] Apart from the above, the plaintiff has also not taken proper care and caution about the protection of her property by taking necessary steps as against the declaration of her instrument as void by the Revenue Authority or the Competent Authority under the provisions of Consolidation Act. Even today, the plaintiff has not placed on record any material which would show that she has taken any steps under the Consolidation Act to rectify the defect for validating her Sale Deed.

22] Even if, the question may arise about valid title and possession of defendant, the fact of seeking the equitable relief

by plaintiff cannot be overlooked. Since the plaintiff has come before the court seeking equitable relief, the initial burden will be lying upon her to show her valid title and establish prima facie case on her own legs. In the case in hand, the plaintiff has failed to show her prima facie case in support of her alleged surviving right and interest in the suit property.

23] Apart from the above, the plaintiff has also claimed injunction against the revenue authorities - defendant Nos. 3 to 5 from effecting or changing the revenue records in respect of the suit properties. First of all, the very claim itself would amount interference in their official duties. Therefore, such kind of relief cannot be entertained having regards to its nature and scope. Moreover, the plaintiff has other efficacious and statutory remedy such as appeal under the revenue proceeding for challenging any change or effecting Mutation Entry in the concerned record of rights. On this ground also, the case of plaintiff as against the revenue authorities cannot be entertained as well. Even otherwise, the jurisdiction of civil court is expressly barred under section 158 of the Maharashtra Land Revenue Code. Consequently, I hold that the plaintiff has completely failed to establish the prima facie case as required. Hence, I answer point No. 1 in the negative.

AS TO POINT NO. 2 & 3 :

24] As the plaintiff has failed to establish her prima facie case, the question of further consideration of the equitable grounds such as the balance of convenience and irreparable loss does not arise. Even otherwise, the defendants as per record seem to be in physical possession since long and enjoying the suit property. On the contrary, the plaintiff slept over her right for considerable long time. Hence, I answer point Nos. 2 and 3 in the negative as well.

AS TO POINT NO. 4 :

25] As the plaintiff has failed to establish all three essential ingredients required for grant of equitable relief, the temporary injunction will have to be refused by disallowing the application with costs. Hence, in answer to point No. 4, I pass the following order.

ORDER

The application (Exh. 5) is rejected with costs.

Panvel.
Dt.01/08/2019

(U. L. Pathak)
3rd Jt. Civil Judge, Sr. Dn., Panvel.
01/08/2019